IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 886 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

YUSUFBHAI HABIBBHAI PALSANIYA

Appearance:

1. Criminal Revision Application No. 886 of 2004

MR KP RAVAL ADDL PP for Petitioner No. 1

MR KB ANANDJIWALA for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 28/04/2005

ORAL JUDGEMENT

Rule. Mr. Anandjiwala, learned advocate waives service of Rule on behalf of respondent. By consent of

the counsel appearing in the matter, Rule is fixed forthwith.

2. The present petitioner State of Gujarat has preferred this Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the order passed by the learned Special Judge, Patan below Ex.7 for discharge of the opponent No. 2 dated 19.11.2004 in Special (ACB) Case No. 16 of 2002.

3. Brief facts of the case is that, the respondent was working as Talati-cum-Mantri of village Kuvara, Taluka : Siddhpur during the year 2000. On 22nd March, 2000, a trap was arranged on the information furnished by the complainant - Manuji Sardarji Thakor, who told ACB Authority that respondent was demanding Rs.700=00 by way of bribe. It is the prosecution case that trap was successful. Thereafter, ACB, Mehsana filed chargesheet for the offences punishable under Section 7, 13 (1) (g) and 13 (2) of the Prevention of Corruption Act, 1988. During the pendency of the trial, on 20th May, 2004, the respondent preferred an application Ex.7 seeking discharge on the ground that sanction to prosecute against him, which was granted by the Competent Authority, Mehsana is contrary to law, as the authority of Mehsana is not the competent authority to accord the sanction under Section 19 of the Act and so, he prayed for discharge from the offences levelled against him.

Considering the respective submissions of both the sides, the learned Special Judge has found that the respondent was discharging his duty as Talati-cum-Mantri at Village : Kuvara, Taluka : Siddhpur, District : Mehsana. The respondent was posted at village Piprala, Taluka : Santalpur. It is also found by learned Special Judge that respondent was suspended and thereafter reinstated by an order passed by the D.D.O. and hence, sanction under Section 19 of the Act can be only accorded by the D.D.O. Patan and sanction under Section 19 of the Act accorded by the Deputy D.D.O. Mehsana is invalid and application for discharge has been allowed by the learned Special Judge, Patan and against the said order dated 19.11.2004 passed in Special (ACB) Case No. 16 of 2002, the present petitioner preferred this revision application.

4. Heard Mr. Raval, learned Addl.P.P. for the petitioner State and Mr. Anandjiwala, learned advocate for the respondent.

5. During hearing Mr. Raval, learned Addl.P.P. for

the petitioner State has taken me through the order under challenge and the documents attached with the memo of Criminal Revision Application. Mr. Raval has submitted that after formation of new district Patan in 1997, the respondent remained on the establishment of the newly formed Patan District and his lien of service remained with Mehsana District and since the lien at Mehsana was not terminated, the Dy. DDO, Mehsana was competent to accord sanction. Thereupon, circular dated 19th June, 2000 was issued by the Government and Government asked for option from the employees of the District Panchayat, Patan and District Panchayat, Mehsana for their establishment in respective districts and thereupon, the respondent was permanently posted in Patan District. Till 9th May, 2001, the respondent was on deputation and his deputation to the Patan District Panchayat was ad-hoc and the respondent was under the control of District Mehsana till order dated 9th May, 2005 passed by the District Panchayat, Patan and so at the relevant point of time, the respondent was working under the administrative control of District Panchayat, Mehsana and hence, the sanction accorded by the Dy. DDO, Mehsana is legal and proper. He has also submitted that learned Special Judge, Patan over looked this circumstances and passed erroneous order by allowing the discharge application preferred by the present respondent. He has also placed reliance in case of State by Police Inspector Vs. T. Venkatesh Murty, reported in 2004 (7) SCC p.763 and prayed that the revision application be allowed.

6. Mr. Anandjiwala, learned advocate for the respondent has submitted written submission before this court and has supported the judgement under challenge and submitted that the point raised by Mr. Raval at this stage was not raised before the learned Special Judge, Patan and for the first time before this Court, this point is raised and so, order passed by the learned Special Judge cannot be said to be illegal or improper. It is also submitted by Mr. Anandjiwala that Deputy DDO, Mehsana was not competent to accord sanction as he is below the rank of DDO and also the Dy. DDO, Mehsana is not appointing authority or removing authority and Dy. DDO, Mehsana could not have granted the sanction and sanction accorded by the Deputy DDO, Mehsana is illegal and invalid. Learned Advocate Mr. Anandjiwala has placed reliance on the following decisions :-

(i) Gopalbhai Nagoda Vs. State of Gujarat, reported in 1993 (2) GLR p.1238.

(ii) L.S. Trivedi Vs. State of Gujarat, reported in

2001 (1) GLH p.341.

Mr. Anandjiwala has submitted that in view of the ratio laid down by the Apex Court in above decisions, the present revision application deserves to be dismissed.

7. I have gone through the order under challenge and the documents attached thereto. It is pertinent to note that point raised by learned Addl.P.P. Mr. Raval was not raised before the learned Special Judge, Patan and for the first time this point is raised before this court. There is substance in the arguments advanced by Mr. Raval that on 9th May, 2005, the respondent was on deputation at Patan District Panchayat and he was working under the control of District Panchayat, Mehsana. A copy of the order dated 9th May, 2001 passed by the District Panchayat, Mehsana regarding lien is annexed at Annexure - A to the memo of application. A letter dated 28th April, 2000 written by Director of ACB addressed to DDO, Patan requesting to transfer and suspend the respondent as he was involved in corruption case is annexed at Annexure - B. As DDO, Patan has no jurisdiction to pass any order against the respondent, the DDO, Patan wrote letter to the DDO, Mehsana for doing needful in the matter and in pursuance of this letter DDO, Mehsana vide letter dated 19th June, 2000 accorded sanction as per law to prosecute the respondent. No doubt, if this documents were produced before the learned Special Judge, Patan and if this point was raised before the learned Special Judge, Patan, then the learned Special Judge, Patan might have taken another view. Under Section 397 of the Code of Criminal Procedure, this Court has power to rectify any illegality or error committed by the lower court. For this reason, at this stage, it could not be said that sanction accorded by the Dy. DDO is invalid and illegal.

8. The second submission raised by Mr. Anandjiwala that Deputy DDO, Mehsana is not competent authority to accord sanction and only the DDO, Patan is competent to accord sanction but there is no substance in this argument. Without recording the evidence at this stage, it could not be said that whether Dy. DDO is competent authority for according sanction or not. I fully agree with the decisions cited by the learned advocate Mr. Anandjiwala. I have gone through the judgements cited by Mr. Anandjiwala. In the said decisions cited by Mr. Anandjiwala, the final judgement and order passed by the learned Judge have been challenged and in the present case, the final judgement is not delivered and the trial is pending and therefore, the said decisions are not applicable in the present case. I am of the view that

the learned Special Judge has committed an error and therefore, the impugned order is required to be quashed and set aside by allowing the revision application.

9. For the foregoing reasons, the present revision application is allowed. Rule is made absolute. The order passed by the learned Special Judge, Patan dated 19.11.2004 below Ex. 7 in Special (ACB) Case No. 16 of 2002 is hereby quashed and set aside.

(M.D. Shah, J.)
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